

1 RAOUL D. KENNEDY (STATE BAR NO. 40892)  
 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
 2 Four Embarcadero Center, Suite 3800  
 San Francisco, California 94111  
 3 Telephone: (415) 984-6400  
 Facsimile: (415) 984-2698  
 4 Email: Raoul.Kennedy@skadden.com

5 JAMES R. CARROLL (*PRO HAC VICE*)  
 DAVID S. CLANCY (*PRO HAC VICE*)  
 6 CALE P. KEABLE (*PRO HAC VICE*)  
 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
 7 One Beacon Street, 31st Floor  
 Boston, Massachusetts 02108  
 8 Telephone: (617) 573-4800  
 Facsimile: (617) 573-4822  
 9 Email: James.Carroll@skadden.com  
 Email: David.Clancy@skadden.com  
 10 Email: Cale.Keable@skadden.com

11 Attorneys for Defendant  
 Conseco Life Insurance Company  
 12

13 UNITED STATES DISTRICT COURT  
 14 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 15 SAN FRANCISCO DIVISION

16 CEDRIC BRADY, DR. CHARLES	)	CASE NO.: 3:08-CV-05746-SI
HOVDEN, MARION HOVDEN, DR.	)	
17 EUGENE KREPS, DR. JOHN McNAMARA,	)	
DR. HISAJI SAKAI, and JEAN SAKAI,	)	
18 Individually and On Behalf Of All Others	)	<b>CONSECO LIFE INSURANCE</b>
Similarly Situated,	)	<b>COMPANY'S ANSWER AND</b>
	)	<b>AFFIRMATIVE DEFENSES</b>
19 Plaintiffs,	)	<b>TO THE AMENDED COMPLAINT</b>
	)	
20 v.	)	
	)	Amended Complaint filed: April 23, 2009
21 CONSECO, INC. and CONSECO LIFE	)	
22 INSURANCE COMPANY,	)	
	)	
23 Defendants.	)	
	)	

1 Defendant Conseco Life Insurance Company ("Conseco Life"), by its undersigned  
 2 counsel, answers the Amended Complaint, upon knowledge as to itself and its own acts, and  
 3 otherwise upon information and belief, as follows:

4 **ANSWER**

5  
 6 To the extent the paragraphs of the Amended Complaint are grouped under headings  
 7 and sub-headings, Conseco Life responds generally that such headings and sub-headings (which  
 8 are not repeated below) contain legal conclusions as to which no response is required. To the  
 9 extent a response is deemed necessary, Conseco Life denies each and every heading and sub-  
 10 heading in the Amended Complaint and incorporates by reference the response in each paragraph  
 11 below as if fully set forth therein.

12  
 13 The introductory paragraph of the Amended Complaint that precedes the Amended  
 14 Complaint's numbered paragraphs contains legal conclusions as to which no response is required.  
 15 To the extent a response is deemed necessary, Conseco Life denies each and every allegation  
 16 contained in the introductory paragraph of the Amended Complaint, including, but not limited to,  
 17 the Amended Complaint's definition of the term "Conseco."

18 1. Conseco Life denies the allegations in the first sentence of Paragraph 1,  
 19 except admits that it markets certain insurance products. Conseco Life denies the allegations in the  
 20 second sentence of Paragraph 1, except admits that under certain circumstances certain whole life  
 21 insurance policies can provide a death benefit, accumulate a cash value and allow for loans.

22  
 23 2. Conseco Life denies the allegations in the first sentence of Paragraph 2,  
 24 except admits that the Plaintiffs<sup>1</sup> purchased life insurance policies from Massachusetts General  
 25 Insurance Company. Conseco Life lacks knowledge or information sufficient to form a belief as to  
 26

27 <sup>1</sup> Cedric Brady, Dr. Charles Hovden, Marion Hovden, Dr. Eugene Kreps, Dr. John  
 28 McNamara, Dr. Hisaji Sakai and Jean Sakai are herein referred to as "Plaintiffs."

1 the truth of the allegations in the second sentence of Paragraph 2 and on that basis denies those  
2 allegations.

3           3.       Conseco Life denies the allegations in the first sentence of Paragraph 3.  
4  
5       Conseco Life denies the allegations in the second sentence of Paragraph 3, except admits that  
6       Plaintiffs have been sent annual statements, and refers to the Plaintiffs' annual statements for a  
7       complete and accurate statement of their terms.

8           4.       Conseco Life denies the allegations in the first sentence of Paragraph 4.  
9  
10       Conseco Life denies the allegations in the second sentence of Paragraph 4, except admits that  
11       the computer-based administrative system tracking Plaintiffs' policies did not automatically flag  
12       and generate a letter when the amount remaining in their policies' accumulation accounts did not  
13       exceed the sum of the then-guaranteed cash value, the then-applicable surrender charge, and any  
14       indebtedness. Conseco Life denies the allegations in the third sentence of Paragraph 4, which is  
15       unintelligible. Conseco Life denies the allegations in the fourth sentence of Paragraph 4, except  
16       admits that Plaintiffs have been sent annual statements, and refers to the Plaintiffs' annual  
17       statements for a complete and accurate statement of their terms. Conseco Life denies the  
18       allegations in the fifth sentence of Paragraph 4.

19           5.       Conseco Life denies the allegations in Paragraph 5, and refers to the letters  
20       from Conseco Life to the Plaintiffs dated October 7, 2008, for a complete and accurate statement of  
21       their terms.  
22

23           6.       Conseco Life denies the allegations in Paragraph 6.

24           7.       Conseco Life denies the allegations in Paragraph 7, and -- to the extent these  
25       allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and accurate  
26       statement of their terms.  
27  
28

1           8.       Conseco Life denies the allegations in the first sentence of Paragraph 8, and  
2 refers to the letters from Conseco Life to the Plaintiffs dated October 7, 2008, for a complete and  
3 accurate statement of their terms. Conseco Life denies the allegations in the second sentence of  
4 Paragraph 8.

5           9.       Conseco Life denies the allegations in the first sentence of Paragraph 9.  
6 Conseco Life denies the allegations in the second sentence of Paragraph 9, and refers to the Court  
7 filings in *Rosenbaum v. Philadelphia Life, et al.*, 2:93-cv-00834 for a complete and accurate  
8 statement of their terms. Conseco Life denies the allegations in the third and fourth sentences of  
9 Paragraph 9, and refers to the Final Judgment of Class Action in *In Re Conseco Life Ins. Cost Of*  
10 *Insurance Litigation*, MDL No. 04-1610 AHM (MCX), reported at 2007 WL 3170134 (C.D. Cal.  
11 July 3, 2007), and all the other Court filings in that action for a complete and accurate statement of  
12 their terms.  
13  
14

15           10.      Conseco Life denies the allegations in the first sentence of Paragraph 10.  
16 Conseco Life admits the allegations in the second sentence of Paragraph 10. Conseco Life denies  
17 the allegations in the third sentence of Paragraph 10, and refers to Exhibit A to the Amended  
18 Complaint, for a complete and accurate statement of its terms.

19           11.      Conseco Life admits the allegations in the first sentence of Paragraph 11.  
20 Conseco Life denies the allegations in the second sentence of Paragraph 11, and refers to Exhibit B  
21 to the Amended Complaint, for a complete and accurate statement of its terms.  
22

23           12.      Conseco Life denies the allegations in Paragraph 12.

24           13.      Conseco Life avers that Paragraph 13 contains legal conclusions to which no  
25 response is required. To the extent that Paragraph 13 is deemed to contain factual allegations, they  
26 are denied.  
27  
28

1           14.     Conseco Life lacks knowledge or information sufficient to form a belief as  
2 to the truth of the allegations in the first sentence of Paragraph 14 and on that basis denies those  
3 allegations. Conseco Life denies the allegations in the second sentence of Paragraph 14, except  
4 admits and avers that Lifetrend IV, Series 1987 Policy Number 10PM005886, dated December 15,  
5 1987, was issued in the face amount of \$420,676 for insured Cedric T. Brady. Conseco Life lacks  
6 knowledge or information sufficient to form a belief as to the truth of the allegations in the third  
7 sentence of Paragraph 14 and on that basis denies those allegations. Further answering, Conseco  
8 Life avers that Mr. Brady listed his birth date as September 8, 1942 on his application for life  
9 insurance.  
10

11           15.     Conseco Life lacks knowledge or information sufficient to form a belief as  
12 to the truth of the allegations in the first sentence of Paragraph 15 and on that basis denies those  
13 allegations. Conseco Life denies the allegations in the second sentence of Paragraph 15, except  
14 admits and avers that Lifetrend IV, Series 1987 Policy Number 10L0992610, dated December 1,  
15 1988, was issued in the face amount of \$500,000 for insured Charles N. Hovden. Conseco Life  
16 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the  
17 third sentence of Paragraph 15 and on that basis denies those allegations. Further answering,  
18 Conseco Life avers that Dr. Hovden listed his birth date as September 2, 1925 on his application  
19 for life insurance.  
20  
21

22           16.     Conseco Life lacks knowledge or information sufficient to form a belief as  
23 to the truth of the allegations in the first sentence of Paragraph 16 and on that basis denies those  
24 allegations. Conseco Life denies the allegations in the second sentence of Paragraph 16, except  
25 admits and avers that Lifetrend IV, Series 1987 Policy Number 10L1000650, dated February 15,  
26 1989, was issued in the face amount of \$500,000 for insured Marion M. Hovden. Conseco Life  
27 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the  
28

1 third sentence of Paragraph 16 and on that basis denies those allegations. Further answering,  
2 Conseco Life avers that Ms. Hovden listed her birth date as July 19, 1927 on her application for life  
3 insurance.

4  
5 17. Conseco Life lacks knowledge or information sufficient to form a belief as  
6 to the truth of the allegations in the first sentence of Paragraph 17 and on that basis denies those  
7 allegations. Conseco Life denies the allegations in the second sentence of Paragraph 17, except  
8 admits and avers that Lifetrend IV, Series 1987 Policy Number 10L0926910, dated October 1,  
9 1987, was issued in the face amount of \$1,000,000 for insured Eugene Kreps. Conseco Life lacks  
10 knowledge or information sufficient to form a belief as to the truth of the allegations in the third  
11 sentence of Paragraph 17 and on that basis denies those allegations. Further answering, Conseco  
12 Life avers that Dr. Kreps listed his birth date as October 14, 1931 on his application for life  
13 insurance.  
14

15 18. Conseco Life lacks knowledge or information sufficient to form a belief as  
16 to the truth of the allegations in the first sentence of Paragraph 18 and on that basis denies those  
17 allegations. Conseco Life denies the allegations in the second sentence of Paragraph 18, except  
18 admits and avers that Lifetrend IV, Series 1987 Policy Number 1090009718, dated November 6,  
19 1991, was issued in the face amount of \$1,512,359 for insured John McNamara. Conseco Life  
20 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the  
21 third sentence of Paragraph 18 and on that basis denies those allegations. Further answering,  
22 Conseco Life avers that Dr. McNamara listed his birth date as April 6, 1950 on his application for  
23 life insurance.  
24

25 19. Conseco Life lacks knowledge or information sufficient to form a belief as  
26 to the truth of the allegations in the first sentence of Paragraph 19 and on that basis denies those  
27 allegations. Conseco Life denies the allegations in the second sentence of Paragraph 19, except  
28

1 admits and avers that Lifetrend IV, Series 1987 Policy Number 10L1002680, dated June 13, 1989,  
2 was issued in the face amount of \$75,000 for insured Hisaji Sakai. Consecos Life lacks knowledge  
3 or information sufficient to form a belief as to the truth of the allegations in the third sentence of  
4 Paragraph 19 and on that basis denies those allegations. Further answering, Consecos Life avers  
5 that Dr. Sakai listed his birth date as February 28, 1925 on his application for life insurance.  
6

7           20. Consecos Life lacks knowledge or information sufficient to form a belief as  
8 to the truth of the allegations in the first sentence of Paragraph 20 and on that basis denies those  
9 allegations. Consecos Life denies the allegations in the second sentence of Paragraph 20, except  
10 admits and avers that Lifetrend IV, Series 1987 Policy Number 10L1011140, dated June 14, 1989,  
11 was issued in the face amount of \$150,000 for insured Jean Sakai. Consecos Life lacks knowledge  
12 or information sufficient to form a belief as to the truth of the allegations in the third sentence of  
13 Paragraph 20 and on that basis denies those allegations. Further answering, Consecos Life avers  
14 that Ms. Sakai listed her birth date as January 8, 1925 on her application for life insurance.  
15

16           21. The allegations in Paragraph 21 relate solely to Consecos, Inc. Pursuant to  
17 Order of this Court dated July 29, 2009, Consecos, Inc. was dismissed from this action and therefore  
18 no response is required. To the extent that an answer is deemed required, it is denied.  
19

20           22. Consecos Life denies the allegations in the first sentence of Paragraph 22,  
21 except admits and avers that it is a corporation organized under the laws of Indiana, with its  
22 headquarters and principal place of business in Indiana, and that it is registered to do business in,  
23 and does business in, California, among other states. Consecos Life denies the allegations in the  
24 second sentence of Paragraph 22, except admits that on December 31, 1998, Philadelphia Life  
25 Insurance Company merged with Consecos Life. Consecos Life denies the allegations in the third  
26 sentence of Paragraph 22. Consecos Life denies the allegations in the fourth sentence of Paragraph  
27 22, except admits that Massachusetts General issued Plaintiffs' policies.  
28

1           23.     Conseco Life avers that the first sentence of Paragraph 23 contains legal  
2 conclusions to which no response is required. To the extent that the first sentence of Paragraph 23  
3 is deemed to contain factual allegations, they are denied. The allegations in the second sentence of  
4 Paragraph 23 relate solely to Conseco, Inc. Pursuant to Order of this Court dated July 29, 2009,  
5 Conseco, Inc. was dismissed from this action and therefore no response is required. Conseco Life  
6 admits the allegations in the third sentence of Paragraph 23. Conseco Life lacks knowledge or  
7 information sufficient to form a belief as to the truth of the allegations in the fourth sentence of  
8 Paragraph 23 and on that basis denies those allegations. Further answering, Conseco Life avers  
9 that the fourth sentence of Paragraph 23 contains legal conclusions to which no response is  
10 required. To the extent that the fourth sentence of Paragraph 23 is deemed to contain factual  
11 allegations, they are denied.  
12

13           24.     Conseco Life avers that Paragraph 24 contains legal conclusions to which no  
14 response is required. To the extent that Paragraph 24 is deemed to contain factual allegations, they  
15 are denied.  
16

17           25.     Conseco Life avers that the first sentence of Paragraph 25 contains legal  
18 conclusions to which no response is required. To the extent that the first sentence of Paragraph 25  
19 is deemed to contain factual allegations, they are denied. Conseco Life lacks knowledge or  
20 information sufficient to form a belief as to the truth of the allegations in the second sentence of  
21 Paragraph 25 and on that basis denies those allegations.  
22

23           26.     Conseco Life lacks knowledge or information sufficient to form a belief as  
24 to the truth of the allegations in the first sentence of Paragraph 26 and on that basis denies those  
25 allegations. Further answering, Conseco Life avers that the first sentence of Paragraph 26 contains  
26 legal conclusions to which no response is required. To the extent that the first sentence of  
27 Paragraph 26 is deemed to contain factual allegations, they are denied. Conseco Life lacks  
28



1 knowledge or information sufficient to form a belief as to the truth of the allegations in the second  
2 sentence of Paragraph 26 and on that basis denies those allegations. Consecro Life lacks knowledge  
3 or information sufficient to form a belief as to the truth of the allegations in the third sentence of  
4 Paragraph 26 and on that basis denies those allegations. Consecro Life avers that the fourth  
5 sentence of Paragraph 26 contains legal conclusions to which no response is required. To the  
6 extent that the fourth sentence of Paragraph 26 is deemed to contain factual allegations, they are  
7 denied.  
8

9           27.     The allegations in Paragraph 27 relate solely to Plaintiffs' assertion that the  
10 Court has personal jurisdiction over Consecro, Inc. That assertion was rejected by Order of this  
11 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
12 deemed required, Consecro Life denies the allegations in Paragraph 27.  
13

14           28.     The allegations in Paragraph 28 relate solely to Plaintiffs' assertion that the  
15 Court has personal jurisdiction over Consecro, Inc. That assertion was rejected by Order of this  
16 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
17 deemed required, Consecro Life denies the allegations in Paragraph 28.  
18

19           29.     The allegations in Paragraph 29 relate solely to Plaintiffs' assertion that the  
20 Court has personal jurisdiction over Consecro, Inc. That assertion was rejected by Order of this  
21 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
22 deemed required, Consecro Life denies the allegations in Paragraph 29.

23           30.     The allegations in Paragraph 30 relate solely to Plaintiffs' assertion that the  
24 Court has personal jurisdiction over Consecro, Inc. That assertion was rejected by Order of this  
25 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
26 deemed required, Consecro Life denies the allegations in Paragraph 30.  
27  
28

1           31.     The allegations in Paragraph 31 relate solely to Plaintiffs' assertion that the  
2 Court has personal jurisdiction over Consecro, Inc. That assertion was rejected by Order of this  
3 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
4 deemed required, Consecro Life denies the allegations in Paragraph 31.  
5

6           32.     The allegations in Paragraph 32 relate solely to Plaintiffs' assertion that the  
7 Court has personal jurisdiction over Consecro, Inc. That assertion was rejected by Order of this  
8 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
9 deemed required, Consecro Life denies the allegations in Paragraph 32.

10          33.     The allegations in Paragraph 33 relate solely to Plaintiffs' assertion that the  
11 Court has personal jurisdiction over Consecro, Inc. That assertion was rejected by Order of this  
12 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
13 deemed required, Consecro Life denies the allegations in Paragraph 33.  
14

15          34.     The allegations in Paragraph 34 relate solely to Plaintiffs' assertion that the  
16 Court has personal jurisdiction over Consecro, Inc. That assertion was rejected by Order of this  
17 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
18 deemed required, Consecro Life denies the allegations in Paragraph 34.

19          35.     The allegations in Paragraph 35 relate solely to Plaintiffs' assertion that the  
20 Court has personal jurisdiction over Consecro, Inc. That assertion was rejected by Order of this  
21 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
22 deemed required, Consecro Life denies the allegations in Paragraph 35.  
23

24          36.     The allegations in Paragraph 36, and each of its sub-paragraphs, relate solely  
25 to Plaintiffs' assertion that the Court has personal jurisdiction over Consecro, Inc. That assertion  
26 was rejected by Order of this Court dated July 29, 2009, and therefore no response is required. To  
27  
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1 the extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 36  
2 and each of its sub-paragraphs.

3           37. The allegations in Paragraph 37 relate solely to Plaintiffs' assertion that the  
4 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this  
5 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
6 deemed required, Conseco Life denies the allegations in Paragraph 37.

8           38. The allegations in Paragraph 38 relate solely to Plaintiffs' assertion that the  
9 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this  
10 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
11 deemed required, Conseco Life denies the allegations in Paragraph 38.

12           39. The allegations in Paragraph 39 relate solely to Plaintiffs' assertion that the  
13 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this  
14 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
15 deemed required, Conseco Life denies the allegations in Paragraph 39.

17           40. The allegations in Paragraph 40 relate solely to Plaintiffs' assertion that the  
18 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this  
19 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
20 deemed required, Conseco Life denies the allegations in Paragraph 40.

22           41. The allegations in Paragraph 41 relate solely to Plaintiffs' assertion that the  
23 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this  
24 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
25 deemed required, Conseco Life denies the allegations in Paragraph 41.

26           42. The allegations in Paragraph 42 relate solely to Plaintiffs' assertion that the  
27 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this  
28

1 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
2 deemed required, Consecos Life denies the allegations in Paragraph 42.

3 43. The allegations in Paragraph 43 relate solely to Plaintiffs' assertion that the  
4 Court has personal jurisdiction over Consecos, Inc. That assertion was rejected by Order of this  
5 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
6 deemed required, Consecos Life denies the allegations in Paragraph 43.

7 44. The allegations in Paragraph 44 relate solely to Plaintiffs' assertion that the  
8 Court has personal jurisdiction over Consecos, Inc. That assertion was rejected by Order of this  
9 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
10 deemed required, Consecos Life denies the allegations in Paragraph 44.

11 45. The allegations in Paragraph 45 relate solely to Plaintiffs' assertion that the  
12 Court has personal jurisdiction over Consecos, Inc. That assertion was rejected by Order of this  
13 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
14 deemed required, Consecos Life denies the allegations in Paragraph 45.

15 46. The allegations in Paragraph 46 relate solely to Plaintiffs' assertion that the  
16 Court has personal jurisdiction over Consecos, Inc. That assertion was rejected by Order of this  
17 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is  
18 deemed required, Consecos Life denies the allegations in Paragraph 46.

19 47. Consecos Life denies the allegations in the first sentence of Paragraph 47.  
20 Consecos Life lacks knowledge or information sufficient to form a belief as to the truth of the  
21 allegations in the second sentence of Paragraph 47 and on that basis denies those allegations.  
22 Consecos Life denies the allegations in the third sentence of Paragraph 47.

1           48.     Conseco Life denies the allegations in the first sentence of Paragraph 48,  
2 except admits that it sells policies through independent brokers. Conseco Life denies the  
3 allegations in the second sentence of Paragraph 48.

4           49.     Conseco Life denies the allegations in Paragraph 49, and -- to the extent  
5 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and  
6 accurate statement of their terms.

7           50.     Conseco Life denies the allegations in Paragraph 50, and -- to the extent  
8 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and  
9 accurate statement of their terms.

10           51.     Conseco Life denies the allegations in Paragraph 51, except admits -- to the  
11 extent these allegations concern the Plaintiffs -- that Plaintiffs owed premiums pursuant to the  
12 terms of their policies.

13           52.     Conseco Life denies the allegations in Paragraph 52, and -- to the extent  
14 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and  
15 accurate statement of their terms.

16           53.     Conseco Life denies the allegations in the first, second and third sentences of  
17 Paragraph 53, and -- to the extent these allegations concern the Plaintiffs -- refers to the Plaintiffs'  
18 policies for a complete and accurate statement of their terms. Conseco Life denies the allegations  
19 in the fourth sentence of Paragraph 53.

20           54.     Conseco Life denies the allegations in the first sentence of Paragraph 54, and  
21 -- to the extent these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a  
22 complete and accurate statement of their terms. Conseco Life denies the allegations in the second  
23 sentence of Paragraph 54, except admits -- to the extent these allegations concern the Plaintiffs --  
24 that the illustrations attached to the October 7, 2008, letter provide a clear explanation of the  
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1 interest credit. Consecro Life denies the allegations in the third, fourth, fifth and sixth sentences of  
2 Paragraph 54, and -- to the extent these allegations concern the Plaintiffs -- refers to the Plaintiffs'  
3 policies for a complete and accurate statement of their terms.

4           55. Consecro Life denies the allegations in Paragraph 55, and -- to the extent  
5 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and  
6 accurate statement of their terms.

7           56. Consecro Life admits the allegations in the first sentence of Paragraph 56,  
8 and -- to the extent these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a  
9 complete and accurate statement of their terms. Consecro Life denies the allegations in the second  
10 and third sentences of Paragraph 56, and -- to the extent these allegations concern the Plaintiffs --  
11 refers to the Plaintiffs' policies for a complete and accurate statement of their terms.

12           57. Consecro Life lacks knowledge or information sufficient to form a belief as  
13 to the truth of the allegations in the first sentence of Paragraph 57 and on that basis denies those  
14 allegations, except admits and avers that annual statements are issued on Plaintiffs' policies.  
15 Consecro Life denies the allegations in the second and third sentences of Paragraph 57, and -- to the  
16 extent these allegations concern the Plaintiffs -- refers to the Plaintiffs' annual statements for a  
17 complete and accurate statement of their terms.

18           58. Consecro Life lacks knowledge or information sufficient to form a belief as  
19 to the truth of the allegations in the first sentence of Paragraph 58 and on that basis denies those  
20 allegations. Consecro Life denies the allegations in the second sentence of Paragraph 58.

21           59. Consecro Life denies the allegations in the first sentence of Paragraph 59, and  
22 -- to the extent these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a  
23 complete and accurate statement of their terms. Consecro Life denies the allegations in the second  
24 sentence of Paragraph 59, except admits -- to the extent these allegations concern the Plaintiffs --

1 that Plaintiffs' policies contain an "Optional Premium Payment Provision" and refers to the  
2 Plaintiffs' policies for a complete and accurate statement of their terms. Consecro Life denies the  
3 allegations in the third sentence of Paragraph 59, and -- to the extent these allegations concern the  
4 Plaintiffs -- refers to the Plaintiffs' policies for a complete and accurate statement of their terms.  
5

6 60. Consecro Life denies the allegations in Paragraph 60, and -- to the extent  
7 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and  
8 accurate statement of their terms.

9 61. Consecro Life denies the allegations in Paragraph 61, and -- to the extent  
10 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and  
11 accurate statement of their terms.

12 62. Consecro Life denies the allegations in Paragraph 62, and -- to the extent  
13 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and  
14 accurate statement of their terms concerning loans and associated indebtedness.  
15

16 63. Consecro Life denies the allegations in Paragraph 63, and -- to the extent  
17 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and  
18 accurate statement of their terms.

19 64. Consecro Life denies the allegations in the first sentence of Paragraph 64,  
20 except admits -- to the extent these allegations concern the Plaintiffs -- that Plaintiffs' policies  
21 contain an "Optional Premium Payment Provision" and refers to the Plaintiffs' policies for a  
22 complete and accurate statement of their terms. Consecro Life denies the allegations in the second  
23 and third sentences of Paragraph 64, except admits -- to the extent these allegations concern the  
24 Plaintiffs -- that Plaintiffs owed premiums pursuant to the terms of their policies, and refers to the  
25 Plaintiffs' policies for a complete and accurate statement of their terms.  
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1           65.     Conseco Life denies the allegations in Paragraph 65, and -- to the extent  
2 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and  
3 accurate statement of their terms.

4           66.     Conseco Life denies the allegations Paragraph 66, and -- to the extent these  
5 allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and accurate  
6 statement of their terms.

7           67.     Conseco Life denies the allegations in Paragraph 67, and -- to the extent  
8 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and  
9 accurate statement of their terms. Answering further, Conseco Life avers and refers to the October  
10 7, 2008, letter for a complete and accurate statement of the enhanced forfeiture provision's terms.

11           68.     Conseco Life denies the allegations Paragraph 68, and -- to the extent these  
12 allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and accurate  
13 statement of their terms.

14           69.     Conseco Life denies the allegations Paragraph 69, and -- to the extent these  
15 allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and accurate  
16 statement of their terms.

17           70.     Conseco Life denies the allegations in Paragraph 70, and -- to the extent  
18 these allegations concern the Plaintiffs -- refers to the Plaintiffs' annual statements for a complete  
19 and accurate statement of their terms.

20           71.     Conseco Life denies the allegations in Paragraph 71, and -- to the extent  
21 these allegations concern the Plaintiffs -- refers to the Plaintiffs' annual statements for a complete  
22 and accurate statement of their terms.

23           72.     Conseco Life denies the allegations in the first sentence of Paragraph 72, and  
24 refers to Mr. Brady's annual statement for the period from April 15, 1993 to April 16, 1994 for a  
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1 complete and accurate statement of its terms. Consecro Life denies the allegations in the second  
2 sentence of Paragraph 72, and refers to Mr. Brady's annual statement for the period from December  
3 15, 1994 to December 16, 1995 for a complete and accurate statement of its terms. Consecro Life  
4 denies the allegations in the third sentence of Paragraph 72, and refers to the Mr. Brady's annual  
5 statements for a complete and accurate statement of their terms.  
6

7 73. Consecro Life denies the allegations in the first sentence of Paragraph 73, and  
8 refers to Dr. Sakai's annual statement for the period from June 13, 1993 to June 14, 1994 for a  
9 complete and accurate statement of its terms. Consecro Life denies the allegations in the second  
10 sentence of Paragraph 73, and refers to Dr. Sakai's annual statement for the period from June 13,  
11 1996 to June 14, 1997 for a complete and accurate statement of its terms. Consecro Life denies the  
12 allegations in the third sentence of Paragraph 73, and refers to the Dr. Sakai's annual statement for  
13 the period from June 13, 2007 to June 14, 2008 for a complete and accurate statement of its terms.  
14

15 74. Consecro Life denies the allegations in the first sentence of Paragraph 74, and  
16 refers to Ms. Sakai's annual statement for the period from June 14, 1993 to June 15, 1994 for a  
17 complete and accurate statement of its terms. Consecro Life denies the allegations in the second  
18 sentence of Paragraph 74, and refers to Ms. Sakai's annual statement for the period from June 14,  
19 1996 to June 15, 1997 for a complete and accurate statement of its terms. Consecro Life denies the  
20 allegations in the third sentence of Paragraph 74, and refers to Ms. Sakai's annual statement for the  
21 period from June 14, 2007 to June 15, 2008 for a complete and accurate statement of its terms.  
22

23 75. Consecro Life denies the allegations in Paragraph 75, and refers to Dr.  
24 McNamara's annual statements for a complete and accurate statement of their terms.

25 76. Consecro Life denies the allegations in Paragraph 76.

26 77. Consecro Life denies the allegations in Paragraph 77.  
27  
28

1           78.     Conseco Life denies the allegations Paragraph 78, and -- to the extent these  
2 allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and accurate  
3 statement of their terms.

4           79.     Conseco Life denies the allegation in the first sentence of Paragraph 79.  
5 Conseco Life denies the allegations in the second sentence of Paragraph 79, and refers to Exhibit B  
6 to the Amended Complaint, for a complete and accurate statement of its terms.

8           80.     Conseco Life denies the allegations in Paragraph 80.

9           81.     Conseco Life denies the allegations in Paragraph 81.

10          82.     Conseco Life denies the allegations in Paragraph 82.

11          83.     Conseco Life lacks knowledge or information sufficient to form a belief as  
12 to the truth of the allegations in the first and second sentences of Paragraph 83 and on that basis  
13 denies those allegations. Further answering, Conseco Life avers that the third sentence of  
14 Paragraph 83 contains legal conclusions to which no response is required. To the extent that the  
15 third sentence of Paragraph 83 is deemed to contain factual allegations, they are denied  
16

17          84.     Conseco Life denies the allegations in Paragraph 84.

18          85.     Conseco Life denies the allegations in Paragraph 85.

19          86.     Conseco Life denies the allegations in Paragraph 86, and refers to the letters  
20 from Conseco Life to the Plaintiffs dated October 7, 2008, for a complete and accurate statement of  
21 their terms.

22          87.     Conseco Life denies the allegations in Paragraph 87, and refers to the letters  
23 from Conseco Life to the Plaintiffs dated October 7, 2008, for a complete and accurate statement of  
24 their terms. Conseco Life denies the allegations in subparagraph "a" of Paragraph 87, and refers to  
25 the letter from Conseco Life to Dr. Kreps dated October 7, 2008, and the subsequent, related letters,  
26 for a complete and accurate statement of their terms. Conseco Life denies the allegations in  
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1 subparagraph "b" of Paragraph 87, and refers to the letter from Conseco Life to Kenneth Hovden  
2 and Caren Hovden, the beneficiaries for Marion Hovden's policy, dated October 7, 2008, and the  
3 subsequent, related letters, for a complete and accurate statement of their terms. Conseco Life  
4 denies the allegations in subparagraph "c" of Paragraph 87, and refers to the letter from Conseco  
5 Life to Kenneth Hovden and Caren Hovden, the beneficiaries for Dr. Charles Hovden's policy,  
6 dated October 7, 2008, and the subsequent, related letters, for a complete and accurate statement of  
7 their terms. Conseco Life denies the allegations in subparagraph "d" of Paragraph 87, and refers to  
8 the letter from Conseco Life to Dr. Sakai dated October 7, 2008, and the subsequent, related letters,  
9 for a complete and accurate statement of their terms. Conseco Life denies the allegations in  
10 subparagraph "e" of Paragraph 87, and refers to the letter from Conseco Life to Ms. Sakai dated  
11 October 7, 2008, and the subsequent, related letters, for a complete and accurate statement of their  
12 terms. Conseco Life denies the allegations in subparagraph "f" of Paragraph 87, and refers to the  
13 letter from Conseco Life to Mr. Brady dated October 7, 2008, and the subsequent, related letters,  
14 for a complete and accurate statement of their terms. Conseco Life denies the allegations in  
15 subparagraph "g" of Paragraph 87, and refers to the letter from Conseco Life to Dr. McNamara  
16 dated October 7, 2008, and the subsequent, related letters, for a complete and accurate statement of  
17 their terms. Conseco Life denies the allegations in subparagraph "h" of Paragraph 87.

21 88. Conseco Life denies the allegations in the first sentence of Paragraph 88.  
22 Conseco Life denies the allegations in the second sentence of Paragraph 88, except admits -- to the  
23 extent these allegations concern the Plaintiffs -- that Plaintiffs' policies contain an "Optional  
24 Premium Payment Provision" and refers to the Plaintiffs' policies for a complete and accurate  
25 statement of their terms. Conseco Life denies the allegations in the third sentence of Paragraph 88,  
26 and -- to the extent these allegations concern the Plaintiffs -- refers to the Plaintiffs' annual  
27 statements for a complete and accurate statement of their terms. Conseco Life denies the  
28

1 allegations in the fourth sentence of Paragraph 88, and -- to the extent these allegations concern the  
2 Plaintiffs -- refers to the Plaintiffs' policies for a complete and accurate statement of their terms.

3 Consecro Life denies the allegations in the fifth sentence of Paragraph 88.

4  
5 89. Consecro Life denies the allegations in the first sentence of Paragraph 89.  
6 Consecro Life denies the allegations in the second sentence of Paragraph 89, and -- to the extent  
7 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and  
8 accurate statement of their terms. Consecro Life denies the allegations in the third sentence of  
9 Paragraph 89, and -- to the extent these allegations concern the Plaintiffs -- refers to the Plaintiffs'  
10 policies for a complete and accurate statement of their terms.

11  
12 90. Consecro Life denies the allegations in the first sentence of Paragraph 90.  
13 Consecro Life avers that the second, third and fourth sentences of Paragraph 90 contains legal  
14 conclusions to which no response is required. To the extent that the second, third and fourth  
15 sentences of Paragraph 90 are deemed to contain factual allegations, they are denied.

16  
17 91. Consecro Life denies the allegations in Paragraph 91, and -- to the extent  
18 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and  
19 accurate statement of their terms.

20  
21 92. Consecro Life denies the allegations in the first sentence of Paragraph 92,  
22 except admits -- to the extent these allegations concern the Plaintiffs -- that Plaintiffs' policies  
23 contain an "Optional Premium Payment Provision" and refers to the Plaintiffs' policies for a  
24 complete and accurate statement of their terms. Consecro Life denies the allegations in the second  
25 sentence of Paragraph 92, and -- to the extent these allegations concern the Plaintiffs -- refers to the  
26 Plaintiffs' policies for a complete and accurate statement of their terms.

1           93.     Conseco Life lacks knowledge or information sufficient to form a belief as  
2 to the truth of the allegations in the first and second sentences of Paragraph 93 and on that basis  
3 denies those allegations. Conseco Life denies the allegations in the third sentence of Paragraph 93.

4           94.     Conseco Life denies the allegations Paragraph 94.

5           95.     Conseco Life denies the allegations Paragraph 95.

6           96.     Conseco Life denies the allegations in the first sentence of Paragraph 96.  
7 Conseco Life denies the allegations in the second sentence of Paragraph 96, and -- to the extent  
8 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and  
9 accurate statement of their terms.  
10

11           97.     Conseco Life denies the allegations in Paragraph 97, and -- to the extent  
12 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and  
13 accurate statement of their terms.  
14

15           98.     Conseco Life denies the allegations in Paragraph 98, including in  
16 subparagraphs "a" through "g" and refers to the letters from Conseco Life to the Plaintiffs dated  
17 October 7, 2008, for a complete and accurate statement of their terms. Conseco Life denies the  
18 allegations in subparagraph "h" of Paragraph 98.

19           99.     Conseco Life denies the allegations in Paragraph 99, and -- to the extent  
20 these allegations concern the Plaintiffs -- refers to the letters from Conseco Life to the Plaintiffs  
21 dated October 7, 2008, for a complete and accurate statement of their terms.  
22

23           100.    Conseco Life denies the allegations in Paragraph 100.

24           101.    Conseco Life denies the allegations in the first and second sentences of  
25 Paragraph 101. Conseco Life avers that the third sentence of Paragraph 101 contains legal  
26 conclusions to which no response is required. To the extent that the third sentence of Paragraph  
27 101 is deemed to contain factual allegations, they are denied.  
28

1           102. Consec Life denies the allegations in Paragraph 102, and -- to the extent  
2 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and  
3 accurate statement of their terms.

4           103. Consec Life lacks knowledge or information sufficient to form a belief as  
5 to the truth of the allegations in the first sentence of Paragraph 103 and on that basis denies those  
6 allegations. Consec Life denies the allegations in the second sentence of Paragraph 103.

7           104. Consec Life denies the allegations in Paragraph 104.

8           105. Consec Life avers that Paragraph 105 contains legal conclusions to which  
9 no response is required. To the extent that Paragraph 105 is deemed to contain factual allegations,  
10 they are denied, and Consec Life avers that certification of a class is not appropriate in this matter.

11           106. Consec Life avers that Paragraph 106 contains legal conclusions to which  
12 no response is required. To the extent that Paragraph 106 is deemed to contain factual allegations,  
13 they are denied, and Consec Life avers that certification of a class is not appropriate in this matter.

14           107. Consec Life avers that Paragraph 107 contains legal conclusions to which  
15 no response is required. To the extent that Paragraph 107 is deemed to contain factual allegations,  
16 they are denied, and Consec Life avers that certification of a class is not appropriate in this matter.

17           108. Consec Life avers that Paragraph 108 contains legal conclusions to which  
18 no response is required. To the extent that Paragraph 108 is deemed to contain factual allegations,  
19 they are denied, and Consec Life avers that certification of a class is not appropriate in this matter.

20           109. Consec Life avers that Paragraph 109 contains legal conclusions to which  
21 no response is required. To the extent that Paragraph 109 is deemed to contain factual allegations,  
22 they are denied, and Consec Life avers that certification of a class is not appropriate in this matter.

1           110. Consecro Life avers that Paragraph 110 contains legal conclusions to which  
2 no response is required. To the extent that Paragraph 110 is deemed to contain factual allegations,  
3 they are denied, and Consecro Life avers that certification of a class is not appropriate in this matter.

4           111. Consecro Life avers that Paragraph 111 contains legal conclusions to which  
5 no response is required. To the extent that Paragraph 111 is deemed to contain factual allegations,  
6 they are denied, and Consecro Life avers that certification of a class is not appropriate in this matter.

7           112. Consecro Life avers that Paragraph 112 contains legal conclusions to which  
8 no response is required. To the extent that Paragraph 112 is deemed to contain factual allegations,  
9 they are denied, and Consecro Life avers that certification of a class is not appropriate in this matter.

10           113. Consecro Life avers that Paragraph 113 contains legal conclusions to which  
11 no response is required. To the extent that Paragraph 113 is deemed to contain factual allegations,  
12 they are denied, and Consecro Life avers that certification of a class is not appropriate in this matter.

13           114. Consecro Life avers that Paragraph 114 contains legal conclusions to which  
14 no response is required. To the extent that Paragraph 114 is deemed to contain factual allegations,  
15 they are denied, and Consecro Life avers that certification of a class is not appropriate in this matter.

16           115. Consecro Life avers that Paragraph 115 contains legal conclusions to which  
17 no response is required. To the extent that Paragraph 115 is deemed to contain factual allegations,  
18 they are denied, and Consecro Life avers that certification of a class is not appropriate in this matter.

19           116. Consecro Life avers that Paragraph 116 contains legal conclusions to which  
20 no response is required. To the extent that Paragraph 116 is deemed to contain factual allegations,  
21 they are denied, and Consecro Life avers that certification of a class is not appropriate in this matter.

22           117. Consecro Life avers that Paragraph 117 contains legal conclusions to which  
23 no response is required. To the extent that Paragraph 117 is deemed to contain factual allegations,  
24 they are denied, and Consecro Life avers that certification of a class is not appropriate in this matter.

1           118. Consecro Life avers that Paragraph 118 contains legal conclusions to which  
2 no response is required. To the extent that Paragraph 118 is deemed to contain factual allegations,  
3 they are denied, and Consecro Life avers that certification of a class is not appropriate in this matter.  
4

5           119. Consecro Life avers that Paragraph 119 contains legal conclusions to which  
6 no response is required. To the extent that Paragraph 119 is deemed to contain factual allegations,  
7 they are denied, and Consecro Life avers that certification of a class is not appropriate in this matter.  
8

9           120. Consecro Life avers that Paragraph 120 contains legal conclusions to which  
10 no response is required. To the extent that Paragraph 120 is deemed to contain factual allegations,  
11 they are denied, and Consecro Life avers that certification of a class is not appropriate in this matter.  
12

13           121. Consecro Life avers that Paragraph 121 contains legal conclusions to which  
14 no response is required. To the extent that Paragraph 121 is deemed to contain factual allegations,  
15 they are denied, and Consecro Life avers that certification of a class is not appropriate in this matter.  
16

17           122. Consecro Life avers that Paragraph 122 contains legal conclusions to which  
18 no response is required. To the extent that Paragraph 122 is deemed to contain factual allegations,  
19 they are denied.  
20

21           123. Consecro Life incorporates its answers and averments in the paragraphs  
22 above as if fully set forth herein.  
23

24           124. Consecro Life avers that Paragraph 124 contains legal conclusions as to  
25 which no response is required. To the extent that Paragraph 124 is deemed to contain factual  
26 allegations, they are denied.  
27

28           125. Consecro Life avers that Paragraph 125 contains legal conclusions as to  
which no response is required. To the extent that Paragraph 125 is deemed to contain factual  
allegations, they are denied.



1           126. Consec Life avers that Paragraph 126 contains legal conclusions as to  
2 which no response is required. To the extent that Paragraph 126 is deemed to contain factual  
3 allegations, they are denied.

4           127. Consec Life avers that Paragraph 127, and each of its subparagraphs,  
5 contains legal conclusions as to which no response is required. To the extent that Paragraph 127 is  
6 deemed to contain factual allegations, they are denied.

7           128. Consec Life avers that Paragraph 128 contains legal conclusions as to  
8 which no response is required. To the extent that Paragraph 128 is deemed to contain factual  
9 allegations, they are denied.

10           Consec Life avers that the "WHEREFORE" clause between Paragraphs 128 and  
11 129 contains legal conclusions as to which no response is required. To the extent that the  
12 "WHEREFORE" clause between Paragraphs 128 and 129 is deemed to contain factual allegations,  
13 they are denied.

14           129. Consec Life incorporates its answers and averments in the paragraphs  
15 above as if fully set forth herein.

16           130. Consec Life avers that Paragraph 130 contains legal conclusions as to  
17 which no response is required. To the extent that Paragraph 130 is deemed to contain factual  
18 allegations, they are denied.

19           131. Consec Life avers that Paragraph 131 contains legal conclusions as to  
20 which no response is required. To the extent that Paragraph 131 is deemed to contain factual  
21 allegations, they are denied.

22           132. Consec Life avers that Paragraph 132 contains legal conclusions as to  
23 which no response is required. To the extent that Paragraph 132 is deemed to contain factual  
24 allegations, they are denied.

1           133. Consec Life avers that Paragraph 133 contains legal conclusions as to  
2 which no response is required. To the extent that Paragraph 133 is deemed to contain factual  
3 allegations, they are denied.

4           Consec Life avers that the "WHEREFORE" clause between Paragraphs 133 and  
5 134 contains legal conclusions as to which no response is required. To the extent that the  
6 "WHEREFORE" clause between Paragraphs 133 and 134 is deemed to contain factual allegations,  
7 they are denied.  
8

9           134. The allegations in Paragraph 134 relate solely to a cause of action that was  
10 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
11 extent that an answer is deemed required, Consec Life repeats and realleges its answers to all  
12 preceding and subsequent paragraphs as if fully set forth herein.  
13

14           135. The allegations in Paragraph 135 relate solely to a cause of action that was  
15 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
16 extent that an answer is deemed required, Consec Life denies the allegations in Paragraph 135.

17           136. The allegations in Paragraph 136 relate solely to a cause of action that was  
18 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
19 extent that an answer is deemed required, Consec Life denies the allegations in Paragraph 136.  
20

21           137. The allegations in Paragraph 137 relate solely to a cause of action that was  
22 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
23 extent that an answer is deemed required, Consec Life denies the allegations in Paragraph 137.

24           138. The allegations in Paragraph 138 relate solely to a cause of action that was  
25 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
26 extent that an answer is deemed required, Consec Life denies the allegations in Paragraph 138.  
27  
28

1           139. The allegations in Paragraph 139 relate solely to a cause of action that was  
2 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
3 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 139.

4           140. The allegations in Paragraph 140 relate solely to a cause of action that was  
5 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
6 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 140.

7           141. The allegations in Paragraph 141 relate solely to a cause of action that was  
8 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
9 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 141.

10           142. The allegations in Paragraph 142 relate solely to a cause of action that was  
11 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
12 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 142.

13           The allegations in the "WHEREFORE" clause between Paragraphs 142 and 143  
14 relate solely to a cause of action that was dismissed by order of this Court dated July 29, 2009, and  
15 therefore no response is required. To the extent that an answer is deemed required, Consecro Life  
16 denies the allegations in the "WHEREFORE" clause between Paragraphs 142 and 143.

17           143. The allegations in Paragraph 143 relate solely to a cause of action that was  
18 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
19 extent that an answer is deemed required, Consecro Life repeats and realleges its answers to all  
20 preceding and subsequent paragraphs as if fully set forth herein.

21           144. The allegations in Paragraph 144 relate solely to a cause of action that was  
22 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
23 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 144.

1           145. The allegations in Paragraph 145 relate solely to a cause of action that was  
2 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
3 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 145.

4           146. The allegations in Paragraph 146 relate solely to a cause of action that was  
5 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
6 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 146.

7           147. The allegations in Paragraph 147 relate solely to a cause of action that was  
8 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
9 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 147.

10           148. The allegations in Paragraph 148 relate solely to a cause of action that was  
11 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
12 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 148.

13           149. The allegations in Paragraph 149 relate solely to a cause of action that was  
14 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
15 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 149.

16           150. The allegations in Paragraph 150 relate solely to a cause of action that was  
17 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
18 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 150.

19           151. The allegations in Paragraph 151 relate solely to a cause of action that was  
20 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
21 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 151.

22           The allegations in the "WHEREFORE" clause between Paragraphs 151 and 152  
23 relate solely to a cause of action that was dismissed by order of this Court dated July 29, 2009, and  
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1 therefore no response is required. To the extent that an answer is deemed required, Consec Life  
2 denies the allegations in the "WHEREFORE" clause between Paragraphs 151 and 152.

3           152. The allegations in Paragraph 152 relate solely to a cause of action that was  
4 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
5 extent that an answer is deemed required, Consec Life repeats and realleges its answers to all  
6 preceding and subsequent paragraphs as if fully set forth herein.

7           153. The allegations in Paragraph 153 relate solely to a cause of action that was  
8 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
9 extent that an answer is deemed required, Consec Life denies the allegations in Paragraph 153.

10           154. The allegations in Paragraph 154 relate solely to a cause of action that was  
11 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
12 extent that an answer is deemed required, Consec Life denies the allegations in Paragraph 154.

13           155. The allegations in Paragraph 155 relate solely to a cause of action that was  
14 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
15 extent that an answer is deemed required, Consec Life denies the allegations in Paragraph 155.

16           156. The allegations in Paragraph 156 relate solely to a cause of action that was  
17 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
18 extent that an answer is deemed required, Consec Life denies the allegations in Paragraph 156.

19           157. The allegations in Paragraph 157 relate solely to a cause of action that was  
20 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
21 extent that an answer is deemed required, Consec Life denies the allegations in Paragraph 157.

22           158. The allegations in Paragraph 158 relate solely to a cause of action that was  
23 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
24 extent that an answer is deemed required, Consec Life denies the allegations in Paragraph 158.

1           159. The allegations in Paragraph 159 relate solely to a cause of action that was  
2 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
3 extent that an answer is deemed required, Consec Life denies the allegations in Paragraph 159.

4           160. The allegations in Paragraph 160 relate solely to a cause of action that was  
5 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
6 extent that an answer is deemed required, Consec Life denies the allegations in Paragraph 160.

7           The allegations in the "WHEREFORE" clause between Paragraphs 160 and 161  
8 relate solely to a cause of action that was dismissed by order of this Court dated July 29, 2009, and  
9 therefore no response is required. To the extent that an answer is deemed required, Consec Life  
10 denies the allegations in the "WHEREFORE" clause between Paragraphs 160 and 161.

11           161. The allegations in Paragraph 161 relate solely to a cause of action that was  
12 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
13 extent that an answer is deemed required, Consec Life repeats and realleges its answers to all  
14 preceding and subsequent paragraphs as if fully set forth herein.

15           162. The allegations in Paragraph 162 relate solely to a cause of action that was  
16 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
17 extent that an answer is deemed required, Consec Life denies the allegations in Paragraph 162.

18           163. The allegations in Paragraph 163 relate solely to a cause of action that was  
19 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
20 extent that an answer is deemed required, Consec Life denies the allegations in Paragraph 163.

21           164. The allegations in Paragraph 164 relate solely to a cause of action that was  
22 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
23 extent that an answer is deemed required, Consec Life denies the allegations in Paragraph 164.

1           165. The allegations in Paragraph 165 relate solely to a cause of action that was  
2 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
3 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 165.

4           166. The allegations in Paragraph 166 relate solely to a cause of action that was  
5 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
6 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 166.

7           167. The allegations in Paragraph 167 relate solely to a cause of action that was  
8 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
9 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 167.

10           168. The allegations in Paragraph 168 relate solely to a cause of action that was  
11 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
12 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 168.

13           169. The allegations in Paragraph 169 relate solely to a cause of action that was  
14 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
15 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 169.

16           The allegations in the "WHEREFORE" clause between Paragraphs 169 and 170  
17 relate solely to a cause of action that was dismissed by order of this Court dated July 29, 2009, and  
18 therefore no response is required. To the extent that an answer is deemed required, Consecro Life  
19 denies the allegations in the "WHEREFORE" clause between Paragraphs 169 and 170.

20           170. The allegations in Paragraph 170 relate solely to a cause of action that was  
21 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
22 extent that an answer is deemed required, Consecro Life repeats and realleges its answers to all  
23 preceding and subsequent paragraphs as if fully set forth herein.  
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1           171. The allegations in Paragraph 171 relate solely to a cause of action that was  
2 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
3 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 171.

4           172. The allegations in Paragraph 172 relate solely to a cause of action that was  
5 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
6 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 172.

7           173. The allegations in Paragraph 173 relate solely to a cause of action that was  
8 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
9 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 173.

10           174. The allegations in Paragraph 174 relate solely to a cause of action that was  
11 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
12 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 174.

13           175. The allegations in Paragraph 175 relate solely to a cause of action that was  
14 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
15 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 175.

16           176. The allegations in Paragraph 176 relate solely to a cause of action that was  
17 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
18 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 176.

19           177. The allegations in Paragraph 177 relate solely to a cause of action that was  
20 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
21 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 177.

22           178. The allegations in Paragraph 178 relate solely to a cause of action that was  
23 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
24 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 178.



1           The allegations in the "WHEREFORE" clause between Paragraphs 178 and 179  
2 relate solely to a cause of action that was dismissed by order of this Court dated July 29, 2009, and  
3 therefore no response is required. To the extent that an answer is deemed required, Consecro Life  
4 denies the allegations in the "WHEREFORE" clause between Paragraphs 178 and 179.  
5

6           179. Consecro Life incorporates its answers and averments in the paragraphs  
7 above as if fully set forth herein.

8           180. Consecro Life avers that Paragraph 180 contains legal conclusions as to  
9 which no response is required. To the extent that Paragraph 180 is deemed to contain factual  
10 allegations, they are denied.

11           181. Consecro Life avers that Paragraph 181 contains legal conclusions as to  
12 which no response is required. To the extent that Paragraph 181 is deemed to contain factual  
13 allegations, they are denied.  
14

15           182. Consecro Life avers that Paragraph 182 contains legal conclusions as to  
16 which no response is required. To the extent that Paragraph 182 is deemed to contain factual  
17 allegations, they are denied.

18           183. Consecro Life avers that Paragraph 183 contains legal conclusions as to  
19 which no response is required. To the extent that Paragraph 183 is deemed to contain factual  
20 allegations, they are denied.  
21

22           184. Consecro Life avers that Paragraph 184 contains legal conclusions as to  
23 which no response is required. To the extent that Paragraph 184 is deemed to contain factual  
24 allegations, they are denied.

25           185. Consecro Life avers that Paragraph 185 contains legal conclusions as to  
26 which no response is required. To the extent that Paragraph 185 is deemed to contain factual  
27 allegations, they are denied.  
28

1 Consecro Life avers that the "WHEREFORE" clause between Paragraphs 185 and  
2 186 contains legal conclusions as to which no response is required. To the extent that the  
3 "WHEREFORE" clause between Paragraphs 185 and 186 is deemed to contain factual allegations,  
4 they are denied.

5  
6 186. Consecro Life incorporates its answers and averments in the paragraphs  
7 above as if fully set forth herein.

8 187. Consecro Life avers that Paragraph 187 contains legal conclusions as to  
9 which no response is required. To the extent that Paragraph 187 is deemed to contain factual  
10 allegations, they are denied.

11 188. Consecro Life avers that Paragraph 188 contains legal conclusions as to  
12 which no response is required. To the extent that Paragraph 188 is deemed to contain factual  
13 allegations, they are denied.

14  
15 189. Consecro Life avers that Paragraph 189 contains legal conclusions as to  
16 which no response is required. To the extent that Paragraph 189 is deemed to contain factual  
17 allegations, they are denied.

18 190. Consecro Life avers that Paragraph 190 contains legal conclusions as to  
19 which no response is required. To the extent that Paragraph 190 is deemed to contain factual  
20 allegations, they are denied.

21  
22 Consecro Life avers that the "WHEREFORE" clause between Paragraphs 190 and  
23 191 contains legal conclusions as to which no response is required. To the extent that the  
24 "WHEREFORE" clause between Paragraphs 190 and 191 is deemed to contain factual allegations,  
25 they are denied.

26 191. The allegations in Paragraph 191 relate solely to a cause of action that was  
27 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
28

1 extent that an answer is deemed required, Consecro Life repeats and realleges its answers to all  
2 preceding and subsequent paragraphs as if fully set forth herein.

3           192. The allegations in Paragraph 192 relate solely to a cause of action that was  
4 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
5 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 192.  
6

7           193. The allegations in Paragraph 193 relate solely to a cause of action that was  
8 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
9 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 193.

10           194. The allegations in Paragraph 194 relate solely to a cause of action that was  
11 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the  
12 extent that an answer is deemed required, Consecro Life denies the allegations in Paragraph 194.  
13

14           The allegations in the "WHEREFORE" clause between Paragraphs 194 and 195  
15 relate solely to a cause of action that was dismissed by order of this Court dated July 29, 2009, and  
16 therefore no response is required. To the extent that an answer is deemed required, Consecro Life  
17 denies the allegations in the "WHEREFORE" clause between Paragraphs 194 and 195.

18           195. Consecro Life incorporates its answers and averments in the paragraphs  
19 above as if fully set forth herein.  
20

21           196. Consecro Life avers that Paragraph 196 contains legal conclusions as to  
22 which no response is required. To the extent that Paragraph 196 is deemed to contain factual  
23 allegations, they are denied.

24           197. Consecro Life avers that Paragraph 197 contains legal conclusions as to  
25 which no response is required. To the extent that Paragraph 197 is deemed to contain factual  
26 allegations, they are denied.  
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1           198. Consec Life avers that Paragraph 198 contains legal conclusions as to  
2 which no response is required. To the extent that Paragraph 198 is deemed to contain factual  
3 allegations, they are denied.

4           199. Consec Life avers that Paragraph 199 contains legal conclusions as to  
5 which no response is required. To the extent that Paragraph 199 is deemed to contain factual  
6 allegations, they are denied.

7           Consec Life avers that the "WHEREFORE" clause between Paragraphs 199 and  
8 200 contains legal conclusions as to which no response is required. To the extent that the  
9 "WHEREFORE" clause between Paragraphs 199 and 200 is deemed to contain factual allegations,  
10 they are denied.

11           200. Consec Life incorporates its answers and averments in the paragraphs  
12 above as if fully set forth herein.

13           201. Consec Life avers that Paragraph 201 contains legal conclusions as to  
14 which no response is required. To the extent that Paragraph 201 is deemed to contain factual  
15 allegations, they are denied.

16           202. Consec Life avers that Paragraph 202 contains legal conclusions as to  
17 which no response is required. To the extent that Paragraph 202 is deemed to contain factual  
18 allegations, they are denied.

19           203. Consec Life avers that Paragraph 203 contains legal conclusions as to  
20 which no response is required. To the extent that Paragraph 203 is deemed to contain factual  
21 allegations, they are denied.

22           204. Consec Life avers that Paragraph 204 contains legal conclusions as to  
23 which no response is required. To the extent that Paragraph 204 is deemed to contain factual  
24 allegations, they are denied.

1 Consecro Life avers that the "WHEREFORE" clause between Paragraphs 204 and  
2 205 contains legal conclusions as to which no response is required. To the extent that the  
3 "WHEREFORE" clause between Paragraphs 204 and 205 is deemed to contain factual allegations,  
4 they are denied.

5  
6 205. Consecro Life incorporates its answers and averments in the paragraphs  
7 above as if fully set forth herein.

8 206. Consecro Life avers that Paragraph 206 contains legal conclusions as to  
9 which no response is required. To the extent that Paragraph 206 is deemed to contain factual  
10 allegations, they are denied.

11 207. Consecro Life avers that Paragraph 207 contains legal conclusions as to  
12 which no response is required. To the extent that Paragraph 207 is deemed to contain factual  
13 allegations, they are denied.

14  
15 208. Consecro Life avers that Paragraph 208 contains legal conclusions as to  
16 which no response is required. To the extent that Paragraph 208 is deemed to contain factual  
17 allegations, they are denied.

18 209. Consecro Life avers that Paragraph 209 contains legal conclusions as to  
19 which no response is required. To the extent that Paragraph 209 is deemed to contain factual  
20 allegations, they are denied.

21  
22 Consecro Life avers that the "WHEREFORE" clause between Paragraphs 209 and  
23 210 contains legal conclusions as to which no response is required. To the extent that the  
24 "WHEREFORE" clause between Paragraphs 209 and 210 is deemed to contain factual allegations,  
25 they are denied.

26 210. Consecro Life incorporates its answers and averments in the paragraphs  
27 above as if fully set forth herein.

1           211. Consecro Life avers that Paragraph 211 contains legal conclusions as to  
2 which no response is required. To the extent that Paragraph 211 is deemed to contain factual  
3 allegations, they are denied.

4           212. Consecro Life avers that Paragraph 212 contains legal conclusions as to  
5 which no response is required. To the extent that Paragraph 212 is deemed to contain factual  
6 allegations, they are denied.

7           213. Consecro Life avers that Paragraph 213 contains legal conclusions as to  
8 which no response is required. To the extent that Paragraph 213 is deemed to contain factual  
9 allegations, they are denied.

10           Consecro Life avers that the "WHEREFORE" clause between Paragraphs 213 and  
11 Plaintiffs' "JURY DEMAND" contains legal conclusions as to which no response is required. To  
12 the extent that the "WHEREFORE" clause between Paragraphs 213 and Plaintiffs' "JURY  
13 DEMAND" is deemed to contain factual allegations, they are denied.

14           Consecro Life avers that the "JURY DEMAND" immediately preceding Plaintiffs'  
15 "PRAYER FOR RELIEF" contains legal conclusions to which no response is required. To the  
16 extent that the "JURY DEMAND" immediately preceding Plaintiffs' "PRAYER FOR RELIEF" is  
17 deemed to contain factual allegations, they are denied.

18           Consecro Life avers that Plaintiffs' "PRAYER FOR RELIEF" and the  
19 "WHEREFORE" clause immediately following it, contain legal conclusions as to which no  
20 response is required. To the extent that Plaintiffs' "PRAYER FOR RELIEF" and the  
21 "WHEREFORE" clause immediately following it are deemed to contain factual allegations, they  
22 are denied, and Consecro Life further denies that Plaintiffs are entitled to any relief whatsoever.  
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**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Amended Complaint, and each count contained therein, fails to state a cognizable legal claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The Amended Complaint, and each count contained therein, is barred because of Plaintiffs' failure to mitigate, minimize, or avoid their damages, if any.

**THIRD AFFIRMATIVE DEFENSE**

The Amended Complaint, and each count contained therein, is barred because Plaintiffs' reliance on any alleged misrepresentations was unreasonable because the alleged misrepresentations were contradicted by the express terms of the policies.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' count for declaratory relief fails to state a claim for relief because Plaintiffs' harm, if any, will be fairly and adequately resolved by the adjudication of Plaintiffs' other counts.

**FIFTH AFFIRMATIVE DEFENSE**

The Amended Complaint, and each count contained therein, is barred by the applicable statutes of limitations.

**SIXTH AFFIRMATIVE DEFENSE**

The Amended Complaint, and each count contained therein, is barred because it is not ripe.

**SEVENTH AFFIRMATIVE DEFENSE**

The Amended Complaint, and each count contained therein, is barred because Consecro Life has not breached any duty.

**EIGHTH AFFIRMATIVE DEFENSE**

The Plaintiffs are not entitled to equitable relief because Plaintiffs have not suffered, and will not suffer, irreparable harm and have adequate remedies at law.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are preempted, in whole or in part, by ERISA.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by their failure to satisfy contractual conditions precedent.

**ELEVENTH AFFIRMATIVE DEFENSE**

To the extent that Plaintiffs seek exemplary or punitive damages, any such relief would violate statutory limitations on damages, and/or Consecro Life's right to procedural and substantive due process under the Fourteenth Amendment of the United States.

**TWELFTH AFFIRMATIVE DEFENSE**

The Amended Complaint, and each count contained therein, is barred by the doctrines of estoppel, waiver, consent and laches.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred, in whole, or in part, by the Statute of Frauds.



1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 Plaintiffs' claims for violation of the Consumer Protection Statutes of states other  
3 than California are barred by reason of Plaintiffs' failure to identify any unlawful act or practice  
4 that violates any of those other unidentified state's statutes or regulations.  
5

6 **FIFTEENTH AFFIRMATIVE DEFENSE**

7 The Amended Complaint, and each count contained therein, is barred on the  
8 grounds of primary jurisdiction, filed rate doctrine, and/or regulatory approval.  
9

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 Consecro Life reserves the right to amend this answer to assert other affirmative  
12 defenses, as appropriate, as this matter proceeds, and in light of discovery obtained.

13 WHEREFORE, Consecro Life respectfully requests judgment granting the following  
14 relief:

- 15 (a) dismissing the Amended Complaint against Consecro Life with prejudice;  
16 (b) awarding Consecro Life the costs of defending this action, including attorneys' fees,  
17 costs and disbursements;  
18 (c) granting Consecro Life such other and further relief as this Court may deem just and  
19 necessary.  
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1 Dated: August 19, 2009

Respectfully submitted,

3 /s/ Raoul D. Kennedy

4 RAOUL D. KENNEDY (State Bar No. 40892)  
5 Skadden, Arps, Slate, Meagher & Flom LLP  
6 Four Embarcadero Center, Suite 3800  
7 San Francisco, California 94111  
8 Telephone: (415) 984-6400  
9 Facsimile: (415) 984-2698  
10 Email: Raoul.Kennedy@skadden.com

11 JAMES R. CARROLL (*Pro Hac Vice*)  
12 DAVID S. CLANCY (*Pro Hac Vice*)  
13 CALE P. KEABLE (*Pro Hac Vice*)  
14 Skadden, Arps, Slate, Meagher & Flom LLP  
15 One Beacon Street, 31st Floor  
16 Boston, Massachusetts 02108  
17 Telephone: (617) 573-4800  
18 Facsimile: (617) 573-4822  
19 Email: James.Carroll@skadden.com  
20 Email: David.Clancy@skadden.com  
21 Email: Cale.Keable@skadden.com

22 Attorneys for Defendant  
23 Consec Life Insurance Company  
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